

Remarks

Applicant requests favorable reconsideration and allowance of the subject application in view of the preceding amendments and the following remarks.

To the extent the Examiner has not already done so, Applicant requests that the Examiner consider the document listed on the PTO-1449 form submitted with the Information Disclosure Statement filed on June 13, 2005, and initial and return such form with the next official communication.

Claims 1 and 3-20 are currently pending, of which claims 1, 15, and 18 are independent.

By this paper, claim 2 has been cancelled; independent claim 1 has been amended to include features previously recited in claim 2; claims 3 and 4 have been amended to depend from claim 1 instead of cancelled claim 2; and independent claims 15 and 18 have been amended in the same manner as independent claim 1. Support for these changes can be found in the original application, as filed. No new matter has been added.

Applicant requests that this Amendment After Final Rejection be entered under 37 C.F.R. § 1.116. Applicant submits that the present amendments place the claims in condition for allowance, or at least in better form for appeal. The amendments were not previously presented due to Applicant's belief that the prior claims were allowable. Moreover, the amendments would not appear to require a further search by the Examiner, as amended independent claim 1 is of the same scope as previously-considered claim 2, and the amendments to independent claims 15 and 18 merely track the changes to claim 1.

In the Office Action dated April 7, 2005, claims 1-12, 14, and 16-20 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,078,728 to O'Rourke et al. Claims 13 and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the O'Rourke et al. patent in view of U.S. Patent No. 5,647,053 to Schroeder et al. Applicant respectfully traverses these rejections.

Nevertheless, without conceding the propriety of the rejections, and solely to advance prosecution, Applicant has amended independent claims 1, 15, and 18 to amplify the distinctions between the present invention and the cited art.

Independent claim 1 relates to an evaporator that includes a bottle containing a substance to be evaporated, and a wick having a lower portion disposed in the substance in the bottle and an upper portion protruding from the bottle. The evaporator also includes a housing adapted to receive the bottle and wick, an electrical plug assembly, a heating device, and an adjuster adapted to adjust a spacing of the wick relative to the heating device. The adjuster includes a ratcheting mechanism that retains the adjuster in any one of a plurality of discrete adjustment settings.

Independent claim 15 also relates to an evaporator including a bottle and wick, a housing adapted to receive the bottle and wick, an electrical plug assembly, a heating device, and an adjuster adapted to adjust a spacing of the wick relative to the heating device. As in claim 1, the adjuster recited in claim 15 includes a ratcheting mechanism. Claim 15 additionally recites that the electrical plug assembly includes a rotatable plug deck having a locking mechanism.

Independent claim 18 similarly relates to an evaporator including a bottle and wick, a housing adapted to receive the bottle and wick, an electrical plug assembly, a heating device, and an adjuster adapted to adjust a spacing of the wick relative to the heating device. As recited in claim 18, the adjuster includes a retaining dog that is biased into contact with the housing to retain the adjuster in any one of a plurality of discrete adjustment settings.

Applicant submits that the cited art does not teach or suggest such features of Applicant's invention, as recited in independent claims 1, 15, and 18.

For reasons explained in the Request for Reconsideration filed on June 1, 2005, Applicant maintains that the O'Rourke et al. patent does not teach or suggest the use of a bottle-and-wick arrangement, nor does it teach or suggest an adjuster for adjusting the spacing of the wick relative to a heating device, as recited in independent claims 1, 15, and 18. In the Advisory Action dated June 22, 2005, the Examiner asserts that the O'Rourke et al. patent does teach a "wick-type" volatile substance dispenser, citing column 6, lines 7-10, which read as follows:

[T]he volatile carrier 10 is designed to be flexibly usable with a variety of mat or wick-type heating devices, serving as an alternative to convention mat or liquid-bearing wick arrangements.

Applicant submits that this language is entirely consistent with the rest of the O'Rourke et al. patent, which teaches the use of a **non-flowable** volatile ingredient instead of a bottle-and-wick arrangement. In FIG. 1 of the O'Rourke et al. patent (reproduced below), the volatile carrier is designated by reference number 10 and the heating device is designated by reference number 12. The volatile carrier 10 contains the volatile ingredient in the form of a unitary reservoir block 24, which the O'Rourke et al. patent defines as "any substantially unitary

systems, which the O'Rourke et al. patent notes are "subject to spilling and the like." (O'Rourke et al., col. 1, lines 51-66.)

Accordingly, the O'Rourke et al. patent fails to teach or suggest a bottle-and-wick arrangement, let alone teach or suggest an adjuster for adjusting the spacing of the wick relative to a heating device, as recited in each of independent claims 1, 15, and 18.

The Schroeder et al. patent apparently was cited for its teaching of a rotatable plug deck, as recited, for example, in claim 15. However, it is not at all clear whether the Schroeder et al. patent teaches or suggests a wick adjuster, let alone a wick adjuster that includes a ratcheting mechanism, as recited in independent claims 1 and 15, or a retaining dog, as recited in independent claim 18.

Applicant submits that none of the cited art teaches or suggests, either individually or in combination, the features of Applicant's invention recited in independent claims 1, 15, and 18. Applicant, therefore, requests favorable reconsideration and withdrawal of the rejections of those claims.

The rest of the claims variously depend from independent claims 1, 15, and 18, and are believed to be patentable for at least the same reasons. Further individual consideration of the dependent claims is requested.

Applicant submits that the subject application is in condition for allowance. Favorable reconsideration, withdrawal of the rejections set forth in the Office Action, and an early Notice of Allowance are requested.

Applicant's undersigned attorney can be reached in the Washington, D.C. office of Fitzpatrick, Cella, Harper & Scinto by telephone at (202) 530-1010. All correspondence should continue to be directed to the address given below for S.C. Johnson & Son, Inc.

Respectfully submitted,



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